

REMARKS

In the Office Action dated August 11, 2005, claims 1, 4-8, and 34 were rejected under 35 U.S.C. § 102 over U.S. Patent No. 6,795,912 (Itoh); claims 35 and 36 were rejected under § 103 over Itoh in view of U.S. Patent No. 6,581,159 (Nevis); and claims 9, 10 and 37 were rejected under § 103 over Itoh in view of U.S. Patent No. 6,718,373 (Bearden) and Nevis.

Applicant acknowledges the allowance of claims 18, 20, 21, 27-29, 31-33, and 38-40.

SUMMARY OF TELEPHONIC INTERVIEW

On November 4, 2005, a telephonic interview was conducted between the undersigned attorney and the Examiner. In the telephonic interview, allowable claims 18 and 27 were discussed, and elements of claims 18 and 27 deemed allowable by the Examiner were discussed. Specifically, one element indicated by the Examiner as being allowable in claim 18 is the act of *modifying* the configuration file to direct a system loader to execute the firmware install patch instead of an operating system in each computer system. *See also* 8/11/2005 Office Action at 10. In claim 27, the Examiner pointed to the recitation in lines 8 and 9 of claim 27 regarding a configuration file configurable to select the firmware patch for execution on a next boot as being an element not disclosed by the prior art. *See also id.*

The undersigned attorney indicated that independent claims 1 and 9 would be modified to incorporate the identified allowable subject matter. Although no agreement was reached in the interview, the Examiner indicated that he will consider the amendments.

Claim 1 has thus been amended by reciting that the configuration file is *modifiable* to direct the system loader to execute the firmware patch instead of the operating system in response to a subsequent boot request.

Independent claim 9 has been amended to recite that a modified boot image comprises a revised firmware, a configuration file, an install application, and a firmware patch having a bootable kernel different from an operating system operable on the respective computer system, and that the configuration file is *modifiable* to select the firmware patch for execution on a next boot.

In view of the foregoing, it is respectfully submitted that independent claims 1 and 9, and respective dependent claims, are allowable.

**COMMENTS ON STATEMENT OF REASONS FOR
INDICATION OF ALLOWABLE SUBJECT MATTER**

The Office Action, on page 9, paraphrased claim elements of independent claim 18 that were considered allowable subject matter. On page 10, the Office Action stated that “[s]imilar limitations are recited in independent claim 27.” Applicant notes that claim 27 uses words that are different from claim 18 – therefore, it is respectfully submitted that claim 27 should be construed according to the actual words of claim 27, and not on the words of claim 18.

In view of the foregoing, allowance of all claims is respectfully requested. The Commissioner is authorized to charge any additional fees and/or credit any overpayment to Deposit Account No. 08-2025 (10005272-1).

Respectfully submitted,

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